

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

ARY JEWELERS, LLC,

Plaintiff,

V.

IBJTC BUSINESS CREDIT CORPORATION  
and DAVID MOLINARIO,

Defendants.

Civil Action No. 04-10281-EFH

## **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, defendants IBJTC Business Credit Corporation and David Molinario respectfully move for summary judgment against the plaintiff, ARY Jewelers, LLC on both counts of its First Amended Complaint. In support of this Motion, the defendants submit the accompanying Statement of Undisputed Material Facts pursuant to Local Rule 56.1, the Affidavit of Steven Cole with attached exhibits, the Affidavit of Francis D. O'Connor, Jr. with attached exhibits, the Affidavit of Kate Cimini, Esq. with attached exhibits, and a Memorandum of Law in Support of their Motion. As these materials demonstrate, there is no genuine issue of material fact, and the defendants are entitled to judgment as a matter of law.

WHEREFORE, defendants respectfully request that their Motion be allowed and that the First Amended Complaint be dismissed in its entirety.

IBJTC BUSINESS CREDIT CORPORATION  
and DAVID MOLINARIO

By their attorneys,

/s/ Kate Cimini

Kate Cimini (BBO No. 654336)

Ropes & Gray LLP

One International Place

Boston, Massachusetts 02110-2624

(617) 951-7000

Robert S. Fischler (Admitted *pro hac vice*)

Ropes & Gray LLP

45 Rockefeller Plaza

New York, NY 10111

(212) 841-5700

Dated: August 11, 2005

**Local Rule 7.1(A)(2) Certification**

I, Robert S. Fischler, attorney for the IBJTC Business Credit Corporation and David Molinaro hereby certify that I have conferred with counsel for ARY Jewelers, LLC regarding the subject of the instant motion and we attempted in good faith to resolve or narrow the issues raised by the instant motion.

/s/ Robert S. Fischler

Robert S. Fischler

**CERTIFICATE OF SERVICE**

I hereby certify that on August 11, 2005, copies of the foregoing Motion for Summary Judgment, Memorandum of Law in Support of Defendants' Motion for Summary Judgment, Affidavit of Kate Cimini and attached exhibits, Affidavit of Steven Cole and attached exhibits, and Affidavit of Francis D. O'Connor, Jr. and attached exhibits were served on counsel for the plaintiff Stephen P. Carrigan, The Carrigan Law Firm, LLP, 1331 Lamar, Suite 1550, Houston, TX 77010 by United States mail.

/s/ Kate Cimini

Kate Cimini